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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

In re VIOLET G. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Petitioner and Respondent,

v.

SUSANA G.,

Objector and Appellant.

B194262

(Los Angeles County
Super. Ct. No. CK36669)

APPEAL from an order of the Superior Court of Los Angeles County. Irwin
Garfinkel, Juvenile Court Referee. Affirmed.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant and
Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel,
Lisa Proft, Deputy County Counsel, for Plaintiff and Respondent.

Mother Susana appeals from the trial court's order terminating her parental rights in her twelve-year-old daughter, Violet, and seven-year-old son, Ismael. We affirm.

FACTS AND PROCEEDINGS

In February 1999, police officers pulled mother Susana over because she was driving with her then four-year-old daughter, Violet, unrestrained by a car seat. In searching the car, police found drug paraphernalia, including a crack pipe and uncapped syringes. Accordingly, the Department of Children and Family Services filed a dependency petition, which is not in the record, making Violet a ward of the court.

Two mothers later, mother gave birth to Ismael, at which time she tested positive for cocaine. The department detained mother's four minor children and filed a second petition, which is in the record and is the operative petition in these proceedings. Two of those children – Victor and Desire – have since turned 18 and are not part of this appeal. The other two children are still minors and involved in the appeal: Violet born in October 1994, and Ismael born in April 1999. (Unless the context indicates otherwise, when we refer in this opinion to the “children,” we mean Violet and Ismael.)

The court sustained the petition's allegations that mother had exposed Ismael to drugs in utero and Violet to drug paraphernalia. It further found that mother's history of drug abuse meant she could not care for her children, and neither child's father could care for them because both men were incarcerated.¹ The department placed Violet and Ismael with their maternal Aunt Yolanda. The court ordered the children's aunt not to leave them alone with mother.

In July 1999, the department redetained Violet and Ismael because Aunt Yolanda had permitted mother to have unmonitored contact with them. Mother's unauthorized visits came to the department's attention after police arrested her for endangering the children while being under the influence of heroin. The department placed Violet and

¹ Violet's father has since been deported to Mexico, and Ismael's father has died from a drug overdose.

Ismael with their maternal Aunt Paulette. Since then, the children have, with a few days' exception, remained in Paulette's custody throughout these proceedings.

In May 2000, the court terminated family reunification services because mother was not complying with the reunification plan and court orders. She was arrested in July 2000 and sent to state prison in October, where she remained until she was released sometime before September 2001. She was thereafter arrested twice for drug offenses and sent to county jail. Paulette took the children to visit mother while she was in jail, but they did not visit after authorities moved her to state prison in March 2002, where she remained until freed in July 2002. Throughout mother's stints in and out of custody, Violet's relationship with her continued to be strong, but Ismael, having never bonded with her, cried during visits.

When the department initially placed the children with Paulette, she expressed interest in adopting them, but within a month or two decided against it in order to give mother more time to reunite. In October 2002, the court appointed Paulette the children's legal guardian, and in June 2003, it terminated jurisdiction. Paulette then began to allow mother to stay at her home every other weekend to visit the children when she was not incarcerated. In March 2005, the department recommended the court reinstate jurisdiction over Violet and Ismael to allow the department to regain control over mother's visitation. The court did so, and ordered mother to have only monitored visits with the children and not to discuss the dependency case with them. Despite the court's order, she repeatedly talked to the children about their case. Moreover, her aggressiveness and erratic behavior during visits often upset the children, leading the case social worker to end many of the visits early. Eventually, all visitation ended for not being in the children's best interests.

In August 2005, the department moved to terminate mother's parental rights. The following March, Violet announced she longer wanted to visit mother. The department honored her wish because mother had traumatized Violet during visits by trying to get her to turn against Paulette. After a two day contested hearing in October 2006, the court terminated mother's parental rights in Violet and Ismael and ordered their placement for

adoption by Paulette. The court ordered mother not to contact the children until the court's further order. This appeal followed.

DISCUSSION

Mother contends the court committed three errors in terminating her parental rights in Violet and Ismael. None of her contentions is convincing.

1. *Substantial Evidence of Ismael's Adoptability*

Mother contends the court erred in terminating her parental rights in Ismael because he is unlikely to be adopted. We disagree.

A dependency court may terminate parental rights only if it finds clear and convincing evidence the minor is likely to be adopted. (*In re Ronald V.* (1993) 13 Cal.App.4th 1803, 1806; Welf. & Inst. Code, § 366.26, subd. (c)(1); see *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650 [minor's age, physical condition, and emotional state affect child's adoptability].) Here, Paulette wanted to adopt Ismael. Her desire was, by itself, substantial evidence of his adoptability. As one court explained, " 'Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*' " (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154, italics in original; *In re Roderick U.* (1993) 14 Cal.App.4th 1543, 1550 [foster parent's desire to adopt is substantial evidence of likelihood of adoption]; but see *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065 [that some prospective families are "considering" adoption is not "clear and convincing" evidence of the child's "likelihood" of adoption].)

Although Ismael was described as a personable and healthy boy who made friends easily and whom his social worker believed to be adoptable, mother contends there was

no clear and convincing evidence of his adoptability. (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 224 [social worker's opinion of adoptability is evidence of adoptability].) Her contention requires her to paint as grim a picture of Ismael as possible. The paintbrush she uses is a psychological report about him prepared for the termination hearing. It stated he had a number of disorders affecting behavior, such as attention deficit hyperactivity, obsessive compulsive tendencies, and posttraumatic syndrome that contributed to temper tantrums, bedwetting, impatience, and fighting with other children. In addition, he suffered reading and language delays. The report recommended further counseling and medical evaluation to determine if physiological reasons caused his problems or were treatable with psychotropic medication.

In light of the report's diagnoses, mother predicts Paulette will waver in her willingness to adopt Ismael. The prediction is unpersuasive because Paulette has reared Ismael since he was three months old, and thus the report likely does not tell her anything she does not know about Ismael's behavior; the report instead merely labeled it. Mother also dismisses Paulette's expressed desire to adopt Ismael as somehow false because Paulette had a "long-standing relationship" with him, as if to suggest the relationship might weaken her resolve. To the contrary, the long-standing relationship likely cuts the other way, making her probably that more attached to Ismael and that much more informed about what adopting him entails. (See *In re Jennilee T.*, *supra*, 3 Cal.App.4th at pp. 223-224 [social worker's opinion that child "generally adoptable" because family expressed interest to adopt despite child's risk for "developmental problems" was substantial evidence that there was clear and convincing evidence of likelihood of adoption].)

Finally, mother contends Paulette's willingness to adopt Ismael is, without more, insufficient evidence of adoptability. That is not the law. (*In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649-1650 [existence of prospective family for otherwise unadoptable child may be relied upon as sole evidence of adoptability unless family legally barred from adopting].) Moreover, her authorities do not support her contention. She cites *In re Amelia S.*, *supra*, 229 Cal.App.3d at page 1065, but the facts there bear no

similarity to Ismael and Violet's life with Paulette. *Amelia S.* involved ten children. The appellate court found the dependency court erred in finding clear and convincing evidence of adoptability of five children, when the foster parents of three of them were "considering" adoption, and the two sets of foster parents for the other two did not want to adopt at all. (*Amelia S.*, at pp. 1062-1063.) And *In re David H.* (1995) 33 Cal.App.4th 368, also cited by mother, stands for the proposition that dependency authorities need not identify a specific prospective family for a child to be deemed adoptable – the opposite of what we have here. (*David*, at p. 378.)

2. *Sibling Exception Did Not Apply*

Mother contends the court erred in terminating her parental rights because a statutory exception to adoption to preserve sibling relationships applied. Welfare and Institutions Code section 366.26, subdivision (c)(1)(E), provides for a child's placement short of adoption if termination of parental rights would be detrimental to the child's existing sibling ties. Mother contends Paulette's adoption of Violet and Ismael will interfere, and possibly end, their relationship with their now-adult siblings, Victor and Desire.

Our Supreme Court explained in *In re Celine R.* (2003) 31 Cal.4th 45, that "even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption." (*Id.* at p. 61.) For a court to find the sibling exception applies, the relationship must be currently close and strong, such as one finds among children who grew up in the same house and shared common experiences. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951-952.) The exception applies only under compelling or exceptional circumstances. (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 53, 61.) Those circumstances do not exist here. Ismael has not lived with Victor or Desire since his detention at birth. Violet last lived with them in 1999, when she was four years old. The overnight visits at their Aunt Yolanda's home during which the four children saw each other in the course of the dependency

proceedings are not exceptional or compelling circumstances, and in any event stopped two years before the October 2006 termination hearing. Violet testified she liked visiting her siblings and missed not seeing them but whatever the pleasure or sadness connected to those visits and their end, they are not exceptional circumstances that justify blocking Paulette's adoption of the children. (*In re L.Y.L.*, *supra*, at p. 952.) Mother thus fails to show the sibling exception to adoption applies.

3. *Substantial Parental Relationship Exception*

Mother contends the court erred in terminating her parental rights because Violet and Ismael will suffer a substantial detriment if she is no longer legally their mother. We disagree.

Mother cites the statutory exception to adoption when parent and child have had regular contact from which the child would benefit if continued into the future. (Welf. & Inst. Code, § 366.26, subd (c)(1)(A).) The children's benefit must be more than the good feelings that typically arise from warm interaction between a child and adult. Instead, the parent must play a parental role in the child's life. (*In re Brandon C.* (1999)

71 Cal.App.4th 1530, 1534; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1420; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Those conditions do not exist here.

Mother's contact with the children was inconstant, with periods during which she did not see them at all because she was incarcerated. There were other unexplained absences in which she disappeared for months at a time. Moreover, the children did not want to see her because the visits upset them, and the department respected their wishes because mother undermined the children's sense of well-being. (*In re Amber M.* (2002)

103 Cal.App.4th 681, 690 [quality of relationship is most important factor in analyzing exception].) Ismael viewed Paulette, the only caregiver he knew, as his mother. And although Violet had maintained contact with mother for several years after being detained, she broke off all contact after March 2006. Thus, by the time of the hearing to terminate parental rights, mother had not seen Violet in eight months and Ismael in two

years. The statutory exception to adoption for a substantial parental relationship therefore did not apply.

DISPOSITION

The order terminating parental rights is affirmed.

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RUBIN, J.

WE CONCUR:

COOPER, P. J.

BOLAND, J.